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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S14 11 Cr. 1091 (VM)

5 PETER LESNIEWSKI, MARIE BARAN
6 and JOSEPH RUTIGLIANO,

7 Defendants.
8 -----x

9 July 15, 2013
10 9:30 a.m.

11 Before:

12 HON. VICTOR MARRERO,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: JUSTIN S. WEDDLE

DANIEL BEN TEHRANI

18 NICOLE WARE FRIEDLANDER

Assistant United States Attorneys

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APPEARANCES CONTINUED

KOEHLER & ISAACS, LLP

Attorneys for Defendant Marie Baran

BY: JOEY JACKSON

JOSEPH W. RYAN, JR.

KEVIN MENEILLY

Attorneys for Defendant Joseph Rutigliano

- also present -

Annie Chen

Emma Larson, Government Paralegals

SA Frank LoMonaco, FBI

Yeni Yrizarry, Defendant Baran Paralegal

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1 THE COURT: Good morning. You may be seated.

2 This is a proceeding in the matter the United States
3 v. Lesniewski and others, docket number 11 Cr. 1091, and it is
4 scheduled as the commencement of the trial of the defendants
5 remaining in this matter.

6 Counsel, please enter your appearances for the record.

7 MR. WEDDLE: Good morning, your Honor. Justin Weddle
8 for the United States. I'm here with Daniel Tehrani and Nicole
9 Friedlander, Assistant U.S. Attorneys, and next to
10 Ms. Friedlander is Emma Larson and then Annie Chen, paralegals
11 in our office, and Special Agent Frank LoMonaco.

12 THE COURT: Good morning. Thank you. Welcome.

13 MR. DURKIN: Good morning, Judge. Thomas Durkin on
14 behalf of Dr. Lesniewski. Along with me is Joshua Dratel and
15 Lindsay Lewis from Mr. Dratel's office.

16 MR. DRATEL: Good morning, your Honor.

17 THE COURT: Thank you.

18 MS. LEWIS: Good morning, your Honor.

19 MR. JACKSON: Judge, it's pleasant. Good morning to
20 you. Joey Jackson representing Ms. Baran. I also have
21 Ms. Yeni Yrizarry, our paralegal.

22 THE COURT: Good afternoon.

23 MR. RYAN: Good morning, your Honor. Joe Ryan for Joe
24 Rutigliano and Kevin Meneilly.

25 MR. MENEILLY: Good morning, your Honor.

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THE COURT: Good morning. Thank you. Welcome.

All right. The jury pool will probably not be here for, I would say, at least an hour, so we have some time to go over whatever major issues remain and additional housekeeping matters.

The Court issued its rulings on the various motions in limine on Friday. Since then the Court has received an additional motion from Mr. Rutigliano dealing with the golf video issue.

The Court also has received from Mr. Lesniewski a motion for reconsideration and/or reargument relating to the Court's ruling on the government's motion to preclude certain portions of the testimony of the expert proposed by Dr. Lesniewski.

The Court has also received correspondence from the government dated July 11th, which it is making available to the Court and copies to the defendants certain material that it classifies as 3500 or particular material pertaining to one of the issues that the Court ruled upon in the motions in limine.

So we can address some of these matters at this point. Some of them may or may not be immediate. For example, the matter of the testimony of the government's expert regarding -- or I should say Dr. Lesniewski's expert may not be something immediate unless there is something about that issue that needs to be addressed at this point. We can take a greater amount of

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1 time for the parties to review the submission from
2 Dr. Lesniewski; otherwise, we can deal with it at a sooner
3 time, if it is necessary.

4 Let me first ask the government whether it received
5 the submission from Mr. Rutigliano and Dr. Lesniewski?

6 MR. WEDDLE: Yes, your Honor. We received the
7 submission --

8 MR. JACKSON: Judge, I'm sorry. I don't mean to
9 interrupt.

10 Excuse me, Mr. Weddle.

11 Judge, my client does have a slight hearing problem,
12 and your microphone, Judge, is not up that loudly. I was
13 wondering if there was any possibility --

14 THE COURT: Let me see if I can turn on the
15 microphone. It may be off.

16 MR. JACKSON: Thank you, Judge.

17 THE COURT: I will just speak a little louder.

18 Yes, Mr. Weddle.

19 MR. WEDDLE: Sorry, your Honor. We received the
20 filings that your Honor mentioned.

21 The motion by Mr. Rutigliano is to preclude evidence
22 relating to golf on the grounds that it is irrelevant. I think
23 that it is completely obvious that the defendant's ability to
24 play golf is highly relevant when he claimed disability based
25 on things like his inability to grip tools and to walk on an

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1 uneven ground and other things. I don't have his filing in
2 front of me, but I think that that motion is really something
3 that should be denied out of hand. If your Honor would like a
4 written response, we are happy to do that.

5 THE COURT: No. We don't need any further
6 argumentation in writing on that matter.

7 MR. WEDDLE: The motion to reconsider, you know, I
8 think that there is nothing new in it. So I can go through --
9 I mean, as I was reading it, I noted some items that I think
10 are wrong and are quite easily explained. We could do that now
11 or we could do that at a future time or we could do that in
12 writing; whatever your Honor's preference is we are happy to
13 do.

14 THE COURT: If it is not urgent, if it is not
15 something that is going to come up today, for example, during
16 the opening statements, we could put it off, give you more time
17 to review the matter and respond in writing, if necessary.

18 One issue that I noted the motion stresses is the
19 argument that the government underestimated the qualifications
20 of Dr. Freeman insofar as his experience in reviewing
21 disability claims as a consultant to the SSI program and in the
22 Navy's. That may be an issue that you may want to address in
23 further submissions.

24 MR. WEDDLE: I can address that in 30 seconds right
25 now, your Honor, and I can further address it in writing as

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1 well. But the primary thing that they point to for the
2 relevance of Dr. Freeman's experience with Social Security
3 claims is that it has to do with Social Security listings, and
4 I know what those are. But basically there are lists of
5 certain impairments that render somebody, by definition,
6 disabled under Social Security rules, and under certain
7 circumstances those same rules are applied by the Railroad
8 Retirement Board.

9 None of the cases that we're going to be talking about
10 are cases involving the lists. And in fact, the example given
11 by defense counsel in their brief says that there are documents
12 that are produced in discovery, called disability briefing
13 documents, that talk about a sequential evaluation, and one of
14 the items on the list when a claims examiner is going through
15 the evaluation is they ask does the impairment meet or equal
16 the listing of impairments. The answer to that is always no,
17 and then they go into a different analysis which is basically a
18 case by case analysis. They call it independent case
19 evaluation, or ICE for short, but it basically involves looking
20 at the person's conditions and determining whether that person
21 is unable to do his or her railroad job.

22 The listings are things like if you have -- I'm just
23 making this up, but it is the type of thing where it would say
24 if you have stage-three lung cancer, you are disabled. It has
25 nothing to do with your capabilities, it's just on a list. I

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1 don't know if that is one of them, but I think that that's the
2 type of thing that is on the list. Whereas the evaluation in
3 this case, and the only decisions that are at issue in this
4 case, are evaluations of whether the person's conditions impair
5 them such that they can't do their job. So it is not just a
6 definitional you have this diagnosis at this level of severity,
7 therefore you are disabled, which is what the lists are about.
8 It's much more functional.

9 So this example that they give doesn't change the
10 analysis at all because we're not going to be dealing with the
11 world of Social Security's listed impairments except to say
12 that they don't apply.

13 THE COURT: All right. Mr. Weddle, why don't we put
14 this issue off for the moment. It is likely to take up more
15 time than we have this morning to deal with other more
16 important -- more pressing matters.

17 Anything else on your end?

18 MR. WEDDLE: I had a few housekeeping type items that
19 I thought I would raise, your Honor.

20 THE COURT: Yes.

21 MR. WEDDLE: The most basic one is just to inquire
22 what your Honor -- what the trial schedule would look like. I
23 read your Honor's individual practices, which indicate a
24 five-day week from 9 to 5 with certain breaks, but I just
25 wondered if your Honor was planning to keep to that schedule or

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1 alter it in this case.

2 THE COURT: We are going to more or less stick with
3 it. As you are aware, we have a long trial and at a very
4 inconvenient time for a lot of people in the middle of the
5 summer. So we need to do everything possible to make up as
6 much time as we can.

7 Consequently, we will try to go as much as possible 9
8 to 5 every day except on Fridays. We may need to meet only in
9 the morning on Friday in order to allow the Court to handle
10 other important matters in the afternoon such as sentencings
11 and pleas and matters of that kind, and that may or may not
12 apply to all Fridays, but at least initially we will not meet
13 on August 9th. I have another commitment on that day. If
14 there are times in which matters are pressing and we need to
15 move more expeditiously and get more in, I will work out a
16 schedule under which instead of ending at 5 we can go until 6
17 depending on the availability of court reporters. But we will
18 have to adjust the schedule as we go along and as we get a
19 better sense of whether or not we are going to be able to
20 conclude within the time allotted.

21 Now, there is another matter that may help in gaining
22 at least as much as a day or a half a day, which is the jury
23 selection process, and we will get to that in a moment.

24 OK. Anything else?

25 MR. WEDDLE: Maybe it would be helpful if I just read

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1 out the items that are on my list and then we can take them up
2 if your Honor would like.

3 THE COURT: Yes.

4 MR. WEDDLE: I had a couple of things to say about
5 jury selection, a couple of additional questions that we
6 thought might be useful to add, although your Honor may well
7 have covered them in your Honor's list of questions.

8 We had a few names that we thought perhaps should be
9 added to the list of names.

10 I also wanted to talk about our witness list, which
11 relates to stipulations.

12 I wanted to say something about the Court's initial
13 instructions to the jury describing the case. I think it is
14 very minor.

15 And if we have time this morning, it might be useful
16 to raise -- just to give your Honor some background about an
17 issue that may arise in the future in the trial relating to
18 certain exhibits that we've marked for identification but we
19 are not planning to offer the entirety of it, and I am just
20 going to explain how we have marked them to your Honor so that
21 if this issue comes up later in the trial, you will understand
22 the context in which it is coming up. We are not asking for a
23 ruling now.

24 THE COURT: All right.

25 MR. WEDDLE: Those are the items and I can talk

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1 further about any one of them.

2 THE COURT: The question of names, if you -- we have
3 not yet made the final list of names and witness lists of the
4 people whose identities should be disclosed to the jury. So if
5 you have any such names or people to enter the witness list,
6 just give it to my law clerks and we will make a composite list
7 later on. The same thing for the defendants. If they have any
8 names who should be disclosed, please hand those up during the
9 break that we will be taking before the jury pool comes in.

10 With regards to stipulations --

11 MR. WEDDLE: We are still working on them, your Honor.
12 We've now -- well, I am not sure but I think that we've reached
13 a few. I think that there are several more that we're still
14 conferring about. I'm optimistic that we are going to reach
15 stipulations on essentially all of those issues. It does look
16 like there are a couple where defense counsel made clear they
17 don't want to stipulate on this issue, they want to have a
18 witness. So we may have to add a couple of witnesses to our
19 list that we were hoping to do by stipulation. And I can't
20 make a promise with respect to the other stipulations, but I
21 don't want to be overly pessimistic either and say that we need
22 to add ten witnesses to our list because I do think we are
23 going to reach stipulations on many of the outstanding ones.

24 So that's on stipulations.

25 THE COURT: All right. Now, with regards to

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1 description of the case, you have something else that you wish
2 to add?

3 MR. WEDDLE: The only thing that I was going to raise
4 on that issue, your Honor, is I'm not sure how your Honor was
5 going to do it, and, actually, standing here right now, I've
6 forgotten how we wrote it up. But I was going to suggest that
7 rather than listing for the jury the number of counts involved
8 and, you know, Count Five through 12 are this, that we just
9 leave that a little bit less defined. And the purpose for
10 that, your Honor, is that depending on how the evidence is
11 coming in, the government might decide to streamline the case
12 and just say, you know what, we're not going to call that
13 witness, which means we are going to drop this substantive
14 count.

15 The problem is we would have a disincentive to do that
16 if the jury has been told there are 33 counts in the
17 indictment. Then the jury might wonder what happened to some
18 of the counts. I don't think they need to know at the
19 beginning of the case that there are 33 counts. I think that
20 your Honor could just say those are conspiracy counts, there
21 are a number of substantive healthcare fraud counts, if your
22 Honor was planning to describe the indictment in that kind of
23 detail at all. But if your Honor is, I would just suggest that
24 we not give them count numbers and then we retain some
25 flexibility without having that disincentive.

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1 THE COURT: The easiest thing to do, Mr. Weddle, is to
2 have you prepare what you think would be an acceptable summary
3 that addresses your concern. I also would not want to prolong
4 the amount of detail count by count of all of the charges. It
5 is simpler to summarize. So if you could come forward with a
6 summary, show it to defense counsel, and if you all agree then
7 we will go with that.

8 MR. WEDDLE: I will, your Honor.

9 THE COURT: Now, with regards to exhibits?

10 MR. WEDDLE: So the context that I would like to
11 explain to your Honor is there are a number of exhibits that
12 are entire files that have been marked as government exhibits.
13 And I think it's Government Exhibit 100 to 162, or something in
14 that area, are claim files from the Railroad Retirement Board.
15 And then there is a similar context with respect to patient
16 files that come from doctors' offices. Those are in the 300
17 series of exhibits. We've marked them as exhibits but we don't
18 plan to offer the file as a whole, you know, for a number of
19 reasons.

20 But there are situations where the fact that a
21 document comes from an RRB claim file has evidentiary value,
22 and there are situations where the fact that the document comes
23 from the doctor's office file has evidentiary value. So what
24 we plan to do is just have them marked for identification and
25 then not offer them, but then a person could testify, you know,

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1 I looked in Government Exhibit 101, which is the claim file,
2 and this document comes from the claim file. In fact, that is
3 a bad example because with respect to the claim files I think
4 we are going to reach a stipulation that is going to cover all
5 excerpts from the claim file for that purpose, just for
6 authentication purposes, that anything numbered in a certain
7 way means that it is an excerpt from the claim file.

8 Now, in talking to some of the defense counsel, they
9 may take the position -- I don't want to speak for them, but
10 the indication I have gotten is that certain defense counsel
11 may take the position that the entire file should just be
12 admitted every time, and we disagree with that position. But
13 we just didn't want there to be confusion in the way that we've
14 put government exhibit stickers on documents. We just put it
15 there for identification and it doesn't mean that we plan to
16 offer it.

17 And within the file there are any number of different
18 documents, and they would have -- depending on for what purpose
19 they were being offered, there might be different questions
20 about their admissibility.

21 And just with respect to the claim files, there is an
22 additional issue which is those claims files include the
23 documents that relate to the continuing disability reviews,
24 which your Honor has already excluded. So with respect to the
25 claim files, at least it's clear that they can't be admitted in

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1 their entirety. But we just wanted to give your Honor that
2 context, and then so your Honor knows when we're offering
3 documents that we are offering them as excerpts and that there
4 may come a time when we would have a witness say this document,
5 which has been offered in evidence, comes from, you know,
6 Government Exhibit 303, which is the patient file from the
7 medical office, which wouldn't require offering into evidence
8 Government Exhibit 303.

9 THE COURT: All right. Thanks you.

10 MR. DURKIN: Judge, I think --

11 THE COURT: Yes.

12 MR. DURKIN: I think I could expedite that.

13 The only thing we're concerned about is that we would
14 simply like the right to take an excerpt ourselves from that
15 file, from the bigger file, and obviously if it is something
16 that is excluded, then we can argue about that. But insofar
17 as -- as long as it is OK if the whole -- let's say the whole
18 claim file for the particular individual, if the government
19 wants to do excerpts, we may want the same privilege to be able
20 to take a different document and use it. And I think we are in
21 agreement on that, if I am not mistaken.

22 THE COURT: Mr. Weddle, is there any disagreement with
23 that, as long as there is a basis and a foundation for the
24 defendants' use of someone else?

25 MR. WEDDLE: We are not going to quibble and say it is

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1 not from the claim file if it is from the file or from the
2 doctor file, but we may have an argument about the
3 admissibility depending on the purpose for which they are
4 offering it. I think we are in total agreement on this.

5 THE COURT: That is fine.

6 MR. RYAN: Sorry to interrupt, your Honor. I have a
7 different view. I don't believe that cherrypicking from the
8 RRB claim should be allowed. The whole claim file is the whole
9 picture of the process that these claims were submitted. It
10 has in detail the disability decision, the examiner gives
11 specific reasons for granting the application, and that's going
12 to be the bedrock of our defense. This was an honest, open,
13 well-known system, and the whole file reflects that. And that
14 the idea that you could pick out one document and not let the
15 jury evaluate that document the way the RRB evaluated it is the
16 most critical part of this case. So we object to that, Judge.

17 And I think your Honor would be in a better position
18 to rule on these things as the trial proceeds than doing it now
19 in advance.

20 MR. JACKSON: Judge, just to be clear, I don't want to
21 fill up the courtroom with words but I absolutely echo
22 Mr. Ryan's sentiment in that regard.

23 THE COURT: All right. We'll hold determination on
24 that issue until a later point.

25 All right. Anything else from the government?

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1 MR. WEDDLE: No, your Honor.

2 THE COURT: Thank you. Anything else from defense
3 counsel?

4 MR. DRATEL: Your Honor, just in terms of
5 housekeeping.

6 THE COURT: Yes.

7 MR. DRATEL: Is it OK with the Court if, let's say, on
8 a particular -- there may be a morning session or a day where
9 one of us, either Mr. Durkin or myself might not be here, we
10 might be out doing something else on the case or doing
11 something else, if we let the Court know in advance -- it would
12 not be obviously in a way that would delay the trial. We would
13 be prepared to do it at a time that we knew that particular
14 person who might be absent that day was not needed for a
15 variety of reasons, but if that is OK with the Court?

16 THE COURT: As long as you get a note from your
17 client.

18 MR. DRATEL: Yes. Thank you, your Honor.

19 MR. DURKIN: Judge, in that regard, we may have
20 mentioned this before. I have a matter in Chicago on the
21 23rd that Dr. Lesniewski has agreed to permit me to go back to
22 attend to. So I will not be here on July 23rd.

23 THE COURT: All right.

24 Mr. Ryan.

25 MR. RYAN: Your Honor, we did submit a proposed voir

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1 dire submission of July 9. If it is not in the Court file, we
2 will give you our copy of what we have. It has all the names
3 and suggested questions and suggested concern about addressing
4 the jury's adversity to sitting during the summer and the
5 length of this trial. I just wanted to call it to your Honor's
6 attention.

7 THE COURT: I don't have -- why don't you hand it up.

8 MR. RYAN: Sure.

9 (Hanging)

10 MR. RYAN: Thank you.

11 (Pause)

12 THE COURT: Mr. Weddle, does the government have the
13 submission as to which Mr. Ryan relates?

14 MR. WEDDLE: I confess, your Honor, I don't have it in
15 any of the many binders I brought with me today. I think I
16 remember seeing it, but I am sorry that I don't have it with
17 me. I may be able to run down -- can we pull it up on the
18 computer?

19 (Pause)

20 I can run down and get it.

21 THE COURT: It is not critical at this moment.

22 (Pause)

23 THE COURT: All right. We have a list of names
24 submitted by Mr. Ryan.

25 Mr. Ryan, what is the nature of this list of names?

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1 Are they individuals who are going to be referred to in some
2 form during the course of the trial?

3 MR. RYAN: Yes. They are either workers from the Long
4 Island Railroad, consultants. I've tried to include unions.
5 They will be referred to during the course of the trial, Judge.

6 THE COURT: All right.

7 Anything else from defense counsel?

8 MR. RYAN: Judge, we have three defendants here, and
9 may I respectfully request that we be given an additional three
10 peremptory challenges?

11 THE COURT: Mr. Weddle.

12 MR. WEDDLE: Your Honor, I don't think it is
13 necessary. I think the defense already has ten challenges
14 compared with the government's six. So they already have four
15 additional challenges beyond what the government has. Then
16 they appear to have similar issues and defenses in the case.
17 So I don't think it is necessary in this case to increase the
18 number of peremptory challenges.

19 MR. RYAN: Your Honor, I think this exchange today
20 shows that we are not on line. For example, this discussion
21 about consenting to just portions of the RRB file, as opposed
22 to our position that the whole file should be available to the
23 jury, is one example. We have a doctor who the government is
24 going to claim is fabricating evidence of medical condition,
25 and we have his client, patient, Mr. Rutigliano. So we have --

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1 then we have Marie Baran, who actually worked for the RRB, and
2 until she retired she was working on the government's side of
3 this issue. So we have different statuses of different
4 defendants, and there is going to be a confluence of interests
5 that may conflict and add to our need to have additional rights
6 to exercise peremptory challenges.

7 THE COURT: All right. Mr. Ryan, one possible
8 implication of having extra peremptory challenges, on the other
9 side of the coin, is that we have a larger pool from which to
10 exercise challenges. We already have a difficult time in
11 trying to put together a list of jurors at this time of year
12 for a complicated trial. Instead of 32, if we had to have,
13 let's say, 35 in the initial pool, it would mean essentially
14 prolonging and making it more complex for us to reach 35 rather
15 than 32.

16 I think that with the ten and six breakdown that is
17 traditional in this courtroom even for multiple defendant
18 trials, the defense should have sufficient peremptories and you
19 simply have to work that out among yourselves.

20 MR. DRATEL: Your Honor, if I may?

21 THE COURT: Yes.

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1 MR. DRATEL: Your Honor, if I may.

2 THE COURT: Yes.

3 MR. DRATEL: We join obviously Mr. Ryan's request. In
4 addition, one other reason I think is because of the persistent
5 publicity in this case, which has not been favorable to the
6 defense at all, it's really been one sided in that regard, so
7 those additional challenges will enable us I think to have a
8 fair jury.

9 Thank you.

10 THE COURT: All right.

11 While we are on the question of selecting a jury, let
12 me raise a concern that I alluded to earlier, which is still a
13 considerable issue. We requested an initial pool of 100, from
14 which we need to have a venire of at least 32 in order to
15 enable us to have a jury of 12 regular jurors and two
16 alternates. It is a significant challenge at this time of year
17 to find that number of jurors available for a trial that is to
18 last through most likely through the balance of the summer.

19 We have seen it in other courtrooms already where
20 judges are having a difficult time finding a considerable
21 number of jurors at this time.

22 One possibility that I suggest for you to think about
23 as a way of expediting our ability to find a suitable jury as
24 expeditiously as possible is to try to see if we can identify
25 from the 100 or so initial pool in the venire those for whom

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1 service in the course of the estimated time would not be a
2 problem and see whether we might be able to begin the process
3 with those rather than trying to go through almost all 100 of
4 them one by one and having them make individual determinations
5 as to whether or not they have good reason for not being able
6 to serve for six or seven weeks.

7 So I offer that as a possibility for you to consider,
8 because if we start with those who do not have a problem
9 serving for the six or seven weeks for whatever reasons, we
10 might be able to much more expeditiously reach a number that we
11 can have as a basis for challenges.

12 Mr. Weddle, does the government have any views about
13 that possible approach?

14 MR. WEDDLE: Your Honor, I think it makes sense to
15 address what I would call hardship challenges first, because I
16 think that that is going to be the main issue with respect to
17 getting a jury.

18 I am not sure if your Honor is thinking of addressing
19 that matter in some way other than having people here in the
20 courtroom, but in my experience there is a great benefit to
21 having prospective jurors in the courtroom to talk about
22 whether they can or can't serve, because there are many, many
23 jurors who would much rather not be on a jury. If you simply
24 ask them basically is there going to be any problem for you
25 being on this jury, you get many people selecting themselves

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1 out without any kind of disincentive of having to articulate
2 what their problem is here in the courtroom. And if they can
3 just sort of privately say yes it is going to be a problem for
4 me to sit on that jury, I think it skews the jury pool.

5 I recognize your Honor's concern with efficiency. It
6 does take a little longer to address the issue here in court,
7 but in every trial I have been in I have had jurors say I
8 really can't do this because I have a doctor's appointment on
9 the afternoon of August 5, and the judge says, Well, OK, why
10 don't I call the doctor and see if you can do it after 5 p.m.
11 or on a different day when we are not sitting, would that
12 suffice? Then the juror says, yes, that would be fine.

13 You would lose that juror if we didn't do it in Court
14 is the problem that I see.

15 MR. RYAN: I happen to agree.

16 THE COURT: I recognize that.

17 The concern, however, is out of the hundred how many
18 do we have to go through one by one in order to make those
19 determinations. If let's say as an example we ask and let's
20 say 20 out of the hundred initially say no problem, in that
21 case we have 20 to start with and then we can then go through
22 the process to find 12 acceptable ones.

23 Doing it the other way has the disadvantage of having
24 to go one by one, and we may need to go through 50 in order to
25 get two or three we won't have a problem with or about whom we

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1 would have to make an individual determination, although I do
2 recognize what you are saying.

3 Yes, Mr. Ryan?

4 MR. RYAN: I think we are talking about technique.
5 Our concern and the government's concern rightly is the jurors
6 can opt out by saying they are not available. There is no
7 challenge. There is no burden on the juror to explain why they
8 can't be here. It is the burden of the juror to explain.

9 My suggestion is, Judge, that you have to address the
10 entire pool, I would suggest, and make this case interesting.
11 This is a very interesting case. It is a wonderful opportunity
12 for any citizen to learn about railroads, unions, health issues
13 and things of that nature, to evoke an interest in the case.

14 There are jurors who would, instead of abhorring the
15 opportunity to serve as a juror would find it an opportunity to
16 learn something. I think that is a suggestion I made to the
17 Court in our written submission.

18 I think if your Honor starts out with the idea that 80
19 can be knocked out by sitting and not raising their hand 80 out
20 of 100, we have eliminated a lot of jurors that could rightly
21 serve.

22 THE COURT: Mr. Ryan, I don't think the way you are
23 characterizing it is the way I would envision it.

24 Out of the hundred there are going to be a certain
25 number who are not going to have a problem serving six weeks or

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1 seven weeks, whatever the number is.

2 The others may, and the reasons why they may want to
3 try to opt out may or may not be sufficient. But if we have
4 already identified a pool who don't have a problem, then we
5 could limit the process to those who claim to have a problem
6 and then we can go one by one and deal with what they think is
7 sufficient. But the question is whether we can identify a core
8 who say from the start we don't have a problem serving six or
9 seven weeks.

10 MR. RYAN: Your Honor, I would have no objection to
11 that if it is not a blanket invitation on an abstract premise
12 that 80 percent do not raise their hand and they are out of the
13 case. It is just a question of how it's presented to the jury.
14 I understand your Honor's objective. The question is how to
15 get there.

16 If we do it in the beginning with one general blanket
17 proposition we are going to lose 80 percent of the jurors who
18 otherwise would be qualified and who really do have no good
19 excuse to be excused from this courtroom.

20 THE COURT: All right.

21 MR. RYAN: I am expressing this, and just to take -- I
22 understand your objective, and I agree with the objective.
23 Question is how to get there.

24 THE COURT: Thank you. Yes?

25 MR. DRATEL: Your Honor, we agree with Mr. Ryan on

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1 this. It may take a little more time. This is such a crucial
2 part of the case, I don't want to rush through it for a very
3 minimal time advantage at the very beginning when it is such an
4 important part of the case.

5 I agree with Mr. Ryan, that an opportunity that
6 presents itself to jurors to opt out, the jurors will take
7 advantage of it even if they don't have a valid hardship
8 excuse. We should see those jurors and hear from them, because
9 that is why they are here.

10 THE COURT: Mr. Weddle.

11 MR. WEDDLE: Your Honor there may be a middle ground
12 here, which is if your Honor somehow instructs the jury what
13 you are talking about when you say "problem," so it's not just,
14 I don't feel like doing it. Your Honor could, for example,
15 just tell the jury this is what the trial is going to be. It
16 could last as long as six or seven weeks. That may cause a
17 hardship that would preclude certain of you --

18 THE COURT: Let me stop you there because I think I
19 know where you are going and this is consistent with where I
20 was going. I do not believe that jurors should be just given a
21 free pass without at least some indication of what would be the
22 standard by which the Court would give a pass.

23 In other words, what is the hardship in the form of a
24 reason why people might be excused and give a general
25 definition so that people can apply that in determining whether

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1 or not they may have a problem.

2 If they, after being given that standard, say we don't
3 have a problem, then those who have heard the standard and say
4 that they have a problem could then be questioned as we need
5 one by one to determine whether in fact the problem that they
6 claim they have is sufficient.

7 MR. WEDDLE: I think if your Honor is telling them
8 those things, I think that that would go a long way. I take it
9 your Honor is not going to be releasing those people, so you
10 would just be starting with the people who don't have an
11 affirmative answer on that issue and then we would go back and
12 check people's problems if we get to that point.

13 THE COURT: Precisely.

14 MR. WEDDLE: That seems fine to the government, your
15 Honor.

16 THE COURT: All right.

17 Any further views from the defense?

18 Any other issues that we need to deal with before we
19 proceed?

20 MR. JACKSON: Judge, I know that there is a pending
21 motion to reargue before you, but I just want to be clear on
22 your Honor's decision as it was handed down so that I don't run
23 afoul of it, knowing the parameters of that decision.
24 Obviously I object. It is implicit, of course, in the argument
25 that I made in my opposition to the government's motion in

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1 limine that I differ from your Honor's ruling, but I just want
2 to be clear on a couple of things if I might.

3 The second prong of the argument in the motion in
4 limine dealt with the continuing disability, the
5 recertification. Apparently the issue was whether that issue
6 can come up that the -- it dealt with the negligence of RRB. I
7 understand that the negligence of the RRB, Railroad Retirement
8 Board is not at issue here, and that is not something we will
9 be attacking.

10 However, when it came to the continuing disability
11 review, I think your Honor said that it was irrelevant and that
12 was also something that we would not at liberty to discuss.

13 I think that issue could be relevant here for another
14 reason. Because there would be a annuitants here who would be
15 testifying, I don't know what they will say, we will have some
16 sense based on the materials presented, but I think that the
17 fact that they recertified themselves, certainly that goes to
18 their knowledge and it goes to them saying that they were
19 disabled and it goes to their belief I guess that they were
20 disabled. And, just as my argument would be they lied to the
21 RRB, they misrepresented things to my client.

22 So I just want to be clear on whether or not it's
23 permissible for me to cross-examine those annuitants who
24 testify on the continuing disability issue. I have other
25 issues I would like to raise, but that's the first thing I

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1 wanted to be clear about.

2 THE COURT: Mr. Weddle.

3 MR. WEDDLE: May I just have one moment, your Honor.

4 THE COURT: Yes.

5 MR. WEDDLE:

6 MR. DURKIN: Judge, before Mr. Weddle begins, we would
7 join in Mr. Jackson's request as well and simply point out one
8 other fact. It may also come up for impeachment purposes.
9 Several of the annuitants that I believe are going to testify
10 have admitted in their plea allocutions that that was part of
11 their crime. It is not just the original application but also
12 that they have falsified the recertification. So I think it
13 becomes an issue in that regard as well.

14 THE COURT: Mr. Weddle.

15 MR. WEDDLE: Your Honor, this is exactly what we moved
16 on, and that is exactly what your Honor has excluded. The
17 motion was primarily a Rule 403 motion. The standard used in
18 this set of continuing disability reviews was a different
19 standard, and to bring it in would tend to confuse the issues
20 and mislead the jury. So that is exactly why we moved to
21 preclude it.

22 The witnesses are going to be admitting that they lied
23 to the RRB in their original applications. They are also going
24 to be admitting that they submitted forms by mail to the RRB in
25 furtherance of the scheme. I think that's what Mr. Durkin is

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1 referring to. There are forms, I think they are called G254A,
2 continuing disability update forms or something like that.
3 That's totally different from what we moved on. Those
4 documents correspond to certain overt acts in the indictment
5 and to substantive counts. Defendant Rutigliano is charged
6 with making a false statement on one of those forms, namely,
7 saying that he was not working when or had not worked when he
8 was.

9 So that is a totally different issue, and it has
10 nothing to do with the continuing disability reviews that we
11 moved on. I think, because this was a Rule 403 exclusion based
12 on confusion of the issues and misleading the jury and wasting
13 time, obviously that analysis applies notwithstanding
14 Mr. Jackson's reargument today about other reasons that he
15 would like to bring up the issue.

16 The witnesses who are going to be testifying as
17 cooperating witnesses are going to admit that they submitted
18 false documents to the RRB, a number of false documents that
19 were false in many ways, and that the documents were prepared
20 by different people, including all three of the defendants
21 here, the medical records prepared by Dr. Lesniewski and other
22 forms prepared by Mr. Rutigliano and Ms. Baran.

23 So to cross-examine about another form years later in
24 a different context on which they may or may not have made
25 false statements is still going to confuse the issues and

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1 mislead the jury and waste time.

2 The probative value is minimal, if anything, because
3 they have already will have admitted the false statements that
4 they made, and this really adds nothing to the picture that is
5 of value. It's entirely cumulative and confusing because it is
6 in a different issue.

7 May I have one more moment, your Honor?

8 THE COURT: Yes.

9 Let me see if we can cut this short. Mr. Jackson, to
10 the extent that your argument amounts to is a request for
11 reconsideration of the issue --

12 MR. JACKSON: It does not.

13 THE COURT: -- ruled on in the motion in limine, that
14 request is denied. The motion was acted upon. The ruling is
15 what it is. I don't see any basis so far that has been offered
16 that was not already taken into account in the Court's ruling.

17 MR. JACKSON: Judge, most respectfully, the Court's
18 ruling did not take that into account at all, which is the
19 basis for which I'm bringing it up now. If it did, Judge, in
20 the plain language and text of your ruling, it would be clear,
21 and I wouldn't address it with you.

22 What I am saying is in the context of the RRB, the
23 Railroad Retirement Board, the government urged this Court not
24 to allow the continuing disability recertification review.
25 That is fine. However, if an annuitant is testifying they are

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1 going to be saying that they apparently -- I don't know what
2 they will say. But what I am cross-examining them on is the
3 issue upon them recertifying a lie.

4 So if they misled the RRB and misled them again,
5 clearly that could give some indication that they misled Ms.
6 Baran in the first instance. It goes to their credibility,
7 which your Honor didn't address this at all regarding
8 cross-examination of the annuitants in the motion. It goes to
9 the under lying foundation of what I am saying and what I am
10 urging to this jury.

11 Just as they misled the Railroad Retirement Board,
12 they misled Ms. Baran, who was merely a consultant. The fact
13 that again years later they themselves indicated to Ms. Baran
14 that they were disabled and indicating again to the Railroad
15 Retirement Board goes to the core issue of them believing
16 themselves to be disabled, submitting an application for
17 disability, asking Ms. Baran to assist them with that
18 application, and then again recertifying that they were
19 disabled.

20 So the fact that I cannot cross-examine them on that
21 core issue certainly hinders my client's rights and I think
22 confuses the jury even further.

23 THE COURT: Mr. Jackson, Mr. Weddle has just pointed
24 out that these witnesses will have already indicated presumably
25 in their direct that they falsified documents and made other

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1 misrepresentations to the RRB. That will be part of the record
2 that you can cross-examine on. I don't understand what it is
3 that you are going to get beyond what you have said.

4 MR. JACKSON: It is a lot I'm trying to get, Judge.
5 The fact is these annuitants filled another form out
6 recertifying that they were disabled, just as initially they
7 lied to the RRB, they lied to Ms. Barren they then subsequently
8 lied then by saying they are disabled, but I can't point out to
9 the jury that they lied again. If my indication to the jury is
10 that he initially lied to Ms. Baran and then they went again
11 and lied to the RRB, certainly I should be able to point out
12 that at some later point they again stated they were disabled.

13 The fact that I'm precluded from doing that I think
14 certainly hinders Ms. Baran's right to get a fair trial, and it
15 goes to the core of their credibility. It has nothing to do
16 with what you ruled on in the motion in limine. It wasn't
17 addressed at all. And I think impedes her greatly. It is
18 unfair, it's prejudicial that I can't point out that this
19 witness who is testifying and whose credibility the government
20 is relying upon has lied yet again and tried to mislead the RRB
21 yet again, just as they misled Ms. Baran in assisting them in
22 the application process.

23 This is not a reargument, Judge. This is not
24 something that I am seeking to back door in. It wasn't
25 addressed. I believe that I have a legitimate right on

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1 Ms. Baran's behalf to cross-examine witnesses in that regard,
2 and I think your Honor should permit it and allow it, as it's
3 coming in for completely different issue than the government
4 urged that it be precluded in their motion. It goes to the
5 heart of the matter. It goes to the credibility of that
6 witness, your Honor.

7 THE COURT: Mr. Weddle.

8 MR. WEDDLE: First of all, your Honor, Mr. Jackson
9 didn't respond to our motion in limine. So actually I think
10 probably to be more precise this isn't a motion for reargument
11 because we moved to preclude any reference to any part of the
12 reviews on Rule 401 and 403 grounds, and he didn't respond.

13 So these are new arguments that he is making. For the
14 reasons that I said earlier, they are meritless. This is a
15 Rule 403 exclusion, which means that the prejudice in the form
16 of confusing the issues, misleading the jury, wasting time
17 outweighs any probative value.

18 This particular form filled out let's say in 2010
19 really is, if it has any probative value about a person telling
20 a lie in 2010, it's so minimal as to be clearly precludable
21 under Rule 403.

22 The people will have submitted forms to the RRB. They
23 will admit on the stand that those forms were false. Those
24 forms have legends on them saying that they have to be filled
25 out truthfully, that failing to do so is punishable as a crime.

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1 So everything that he's trying to do is covered. What he's
2 trying to do with this additional form is cumulative of the
3 cross-examination that he's already going to have and is going
4 to cross great prejudice for the reasons stated in our brief
5 that your Honor has ruled on that he didn't respond to.

6 THE COURT: Thank you.

7 MR. JACKSON: Judge, I just want to correct something.

8 THE COURT: Yes.

9 MR. JACKSON: Regarding me not responding, number one,
10 I did respond to what I thought in the motion in limine in fact
11 affected Ms. Baran. Number two, to be clear the continuing
12 disability review was not responded to because they were
13 arguing it should be precluded in light of this argument that
14 we were going to raise about the negligence of the RRB and the
15 RRB not detecting this fraud.

16 I am not arguing that the RRB was negligent. So the
17 continuing disability review in terms of how the government
18 sought to preclude it didn't relate, and I didn't care because
19 I'm not arguing the point about the RRB being negligent.

20 But in the context of your order, Judge, where you
21 seem to exclude for all purposes the whole continuing
22 disability issue, I just think it becomes problematic and it is
23 something that this Court needs to reconsider.

24 THE COURT: Thank you.

25 I have considered it and I have considered it again,

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1 Mr. Jackson. I have ruled on it. I don't see anything new in
2 what you are saying. The government is right. This is a 403
3 issue. The question that you are raising is cumulative. If
4 the witness says on the stand I lied five times, I don't think
5 that it's material that he lied six times. You will have
6 plenty of opportunity to drag out as much as possible the fact
7 that the witness lied five times.

8 I don't see that there is any merit in bringing in
9 possibly confusing and cumulative issues with yet another
10 document to establish the same point. The witness lied. You
11 don't need to hammer the jury with the same issue over and over
12 and over. If the witness' credibility has been challenged by
13 five different lies, then the sixth one is not going to make
14 that much difference. But bringing it in a new document, new
15 context, for other reasons the Court views as unnecessary.

16 MR. JACKSON: Judge, most respectfully isn't that a
17 jury question? Shouldn't the jury be allowed to assess
18 credibility?

19 THE COURT: This is a Court question the. Question of
20 being able to assess credibility for different reasons, for
21 different purposes, the determination of whether something is
22 cumulative and relevant is not a jury issue. I have ruled on
23 the matter. Let's move on.

24 Yes?

25 MR. JACKSON: I have more, Judge, unless this is about

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1 the same issue.

2 THE COURT: If it's about the same issue I don't want
3 to hear it. Mr. Durkin.

4 MR. DURKIN: I was only going to be ask that we be
5 permitted to join in Mr. Jackson's comments. I did want to
6 address just one issue which is more than just this issue.

7 The government has several times now mentioned time,
8 wasting time. There is a real easy way to cut down the time of
9 this trial, and that is them limiting their evidence with
10 respect to Dr. Ajemian and everything else that they are trying
11 to do.

12 I just don't think that it's fair that we should bear
13 the brunt of the waste-of-time argument when it comes to
14 cross-examination. We also asked earlier -- and I was going to
15 raise this and I don't want this to be argumentative -- but we
16 filed a motion that said if we can't be assured that we could
17 put our defense on in the time allotted, we wanted to seek a
18 continuance.

19 I don't want a continuance. I have said that we are
20 prepared to go to trial. But I am very concerned about the
21 amount of evidence the government is going to try to put in,
22 which I think if you want to talk about cumulative or
23 unnecessary, it is unnecessarily prejudicial to our client, all
24 this Ajemian evidence. I just want the record to be clear that
25 we are concerned that we are not going to have time to put our

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1 case in, and I don't think that our cross-examination choices
2 should be precluded simply as a waste-of-time issue. That is a
3 far cry from 4303 prejudice.

4 THE COURT: Two answers to your concern, Mr. Durkin.
5 One is nobody is precluding anything. That is an incorrect
6 characterization. The issue is not preclusion. The issue is
7 how much is enough and whether at some point it becomes
8 irrelevant, immaterial, and cumulative. That's what the issue
9 is, not whether or not you can cross-examine a witness as to
10 how many lies a witness may have said.

11 I repeat if you can cross-examine the witness as to
12 five lies, cross-examining as to the sixth lie becomes
13 cumulative, unnecessary, and wasteful, especially if it
14 requires the introduction of another document that is not yet
15 in the case and which the Court has ruled not material for
16 other reasons.

17 Second, with respect to the government's case, the
18 Court is very aware of the questions of time limitations and
19 the issue of cumulativeness. At any point at which it appears
20 to the Court that the government's presentation of its case is
21 cumulative, either by documentation or by number of witnesses,
22 we will deal with that issue at that time. This Court has on
23 numerous prior occasions in other trials made the government
24 aware that its case was cumulative and so ruled.

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1 MR. DURKIN: Thank you.

2 THE COURT: Anything else?

3 Mr. Jackson, you said you have other issues.

4 MR. JACKSON: I do. Judge, regarding the statement
5 issue, I believe that your ruling pretty much allowed the
6 government to take six assertions that Ms. Baran made, and the
7 other 42 assertions, to preclude those saying that, I guess the
8 Court was reasoning that the government would be allowed to
9 cherry pick statements that Ms. Baran made and that wouldn't
10 offend the rule of completeness or fairness. I just want to
11 address that so I am absolutely clear.

12 The fact is, is that there was an interview conducted
13 of Ms. Baran, and if you parse out the totality of what Ms.
14 Baran said, there could be about 50 separate assertions,
15 depending upon how you parse out what she said.

16 I listed in my memorandum about 46, but I believe the
17 government is saying that it's only the six statements that the
18 government unilaterally determined to be of interest and
19 relevant and necessary that this jury should hear. I believe
20 that was your ruling.

21 The other ones, although taken out of context and
22 completely not in proportion to what she was saying, I can't
23 use. In the event that the witness takes the stand, Judge, and
24 is testifying regarding certain comments that Ms. Baran made
25 and I am looking at her statement and they are lifting

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1 something from a statement, I just believe -- and I will renew
2 my objection, your Honor, when I do object, and I will review
3 my application at that time. But your Honor is not saying that
4 when that witness testifies that if they lift something out of
5 a statement taken out of context that I can't cross-examine
6 them upon it. Is that what your Honor is saying?

7 THE COURT: I am not saying that you cannot
8 cross-examine if cross-examination is appropriate an whatever
9 the issue in the statement is.

10 MR. JACKSON: OK.

11 THE COURT: The question is whether you can come and
12 try to offer another statement from Ms. Baran that you think
13 completes the context which in the Court's view does not
14 complete the context and may be objectionable for other
15 reasons.

16 MR. JACKSON: That's part of the cross-examination.
17 In other words, Judge, in the event that the witness testifies
18 to a statement that was made by Ms. Baran, and that is
19 something lifted wholesale prior to what she said before or
20 immediately following something, I would like -- and I guess
21 the Court just said I could -- to question that witness about
22 whether or not she said what she said to put it in context for
23 the jury so as not to mislead the jury, so as not to confuse
24 the jury, so as not to deny Ms. Baran the right to a fair
25 trial. I will reserve for when that happens, but I just want

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1 to be absolutely clear as to your ruling. You are not saying
2 that I cannot cross-examine on those portions, is that right?

3 THE COURT: You cannot cross-examine on portions that
4 do not satisfy the standards for completeness. If a witness
5 testifies that Ms. Baran asked them to make statements in the
6 forms that were not truthful, and in the next statement Ms.
7 Baran said the sky is blue, the sky is blue has nothing to do
8 with the statement that the witness is testifying to. That
9 would not meet the standard of completeness.

10 MR. JACKSON: I completely agree, Judge. But in the
11 event that they do say something and it is out of context,
12 certainly I'm allowed then, Judge, to cross-examine, and we can
13 deal with it at that time, is that correct?

14 MR. WEDDLE: Your Honor -- I'm sorry.

15 THE COURT: We will have to make a determination
16 whether or not it is out of context.

17 MR. JACKSON: OK.

18 THE COURT: Mr. Weddle.

19 MR. WEDDLE: A couple of things, your Honor. This is
20 the reason why we made this motion, and I think your Honor has
21 ruled on the motion.

22 I don't think that we should reargue every motion over
23 and over again. Our view is that, given your Honor's ruling on
24 the motion, Mr. Jackson should not articulate the substance of
25 any other statement reflected in that memo in cross-examining

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1 the witness.

2 So in your Honor's example, it is not OK, given your
3 Honor's ruling, that the sky is blue, is not subject to the
4 rule of completeness, not admissible if offered by Mr. Jackson,
5 it is not OK for him to say to a witness, Isn't it true,
6 Special Agent, that my client said the sky is blue? That is in
7 violation of your Honor's ruling, and we would strongly object
8 to that. It is simply an effort to get material before the
9 jury that your Honor has ruled to be inadmissible. That is our
10 view.

11 Obviously I have met with the witness. I am going to
12 continue to work on my questions and answers. But my questions
13 are going to be highly targeted, and they are going to elicit
14 as best I can simply the pieces that we have put out in our
15 motion.

16 It is not going to be a wide ranging discussion of all
17 the things that Marie Baran said, and it's not going to be
18 purport to be all the things that Marie Baran said, it is going
19 to be what did she say with respect to this narrow topic and
20 the witness is going to say, I believe, the things we set forth
21 in our motion.

22 I don't believe it's consistent with your Honor's
23 ruling on this matter for Mr. Jackson to then be asking
24 questions about other things that Marie Baran said.

25 MR. JACKSON: I agree. However, my cross-examination

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1 will be targeted also, and to the extent that the government's
2 question elicits something out of context in the statement that
3 was made, I certainly believe I would be permitted --

4 THE COURT: Mr. Jackson, the government has already
5 flagged for you what those statements are. Presumably they are
6 six statements?

7 MR. WEDDLE: Yes, they are in the motion.

8 THE COURT: They are in their motion.

9 So whether or not they are out of context, you know
10 what they are now.

11 MR. JACKSON: I do.

12 THE COURT: So if you feel that any of those are out
13 of context, you have the opportunity during the motion in
14 limine to point that out.

15 MR. JACKSON: I did, Judge.

16 THE COURT: I disagreed with you.

17 MR. JACKSON: I didn't think the disagreement, most
18 respectfully, Judge, was not targeted. I gave the Court 46
19 various statements that Ms. Baran made. I just got pretty much
20 a blanket response that didn't address the various statements.
21 The reality, Judge, is that the government is taking it out of
22 context. It offends the rule of completeness. It's totally
23 misleading to the jury, it's completely prejudicial, and it's
24 unfair and the Court did not rule on the specific statements
25 that I made with regard to them being out of context at all.

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1 THE COURT: Thank you, Mr. Jackson.

2 MR. WEDDLE: Your Honor, may I suggest a method of
3 proceeding in this matter. Obviously Mr. Jackson is an
4 excellent lawyer, and he briefed the matter the way that he did
5 for the reasons that he did. That was a choice that he decided
6 to make strategically. Your Honor has ruled on the motion. To
7 the extent he thinks that something that happens on direct
8 examination opens the door to a particular question that
9 articulates the substance of something that Marie Baran said, I
10 suggest that he first preview that at sidebar and then your
11 Honor can rule on it rather than just throwing out material in
12 front of the jury in a manner that your Honor has already ruled
13 is not admissible.

14 THE COURT: Thank you.

15 Mr. Jackson, that is the proper way to address the
16 issue, and that is the way that this Court typically handles
17 issues such as you've raised.

18 Anything else?

19 Mr. Ryan.

20 MR. RYAN: Is your Honor going to rule on the golf
21 evidence issue?

22 THE COURT: Yes. Mr. Ryan, I have looked at your
23 motion. We discussed this at the conference on the telephone
24 on Friday. I believe the evidence is relevant and I will not
25 preclude it.

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1 To the extent you take issue with the whether or not
2 the government expert physician could opine as to your client's
3 ability to play golf as he did in light of the disabilities
4 that he claimed, the way that that might have been handled is
5 for you to come forward with an equally qualified expert who
6 would testify that indeed your client could play golf in light
7 of the claimed disability, but that is not at issue at this
8 point.

9 Anything else?

10 All right. Let's check to see what the status of the
11 jury pool is at this point.

12 Mr. Weddle, the issue concerning the summary of the
13 charges, did you work that out?

14 MR. WEDDLE: I'm sorry, your Honor.

15 THE COURT: We are going to need that very early on in
16 the voir dire?

17 MR. WEDDLE: I am not sure what your Honor is planning
18 to use, but the introduction that is in the government's
19 proposed voir dire about the nature of the charges doesn't list
20 any count numbers, so I think that's fine.

21 I was thinking if your Honor is planning to say there
22 is an indictment in the case, and the indictment charges
23 generally this, I would just propose that we omit count
24 numbers. But in looking at what the government proposed as the
25 explanation of the charges, it's simply one paragraph, and it

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1 doesn't have count numbers. So I don't think it raises the
2 issue at all.

3 But I can draft something different if your Honor
4 would like something else.

5 THE COURT: If you have that summary and it is
6 acceptable to the defendants, we can use that.

7 The pool will be about ten minutes, perhaps we can
8 take a break for ten minutes.

9 (Recess)

10 (Continued with jury voir dire in next volume)

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